

SENATE BILL NO. 490

INTRODUCED BY L. MOSS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DEFINITION OF "EMPLOYEE" FOR PURPOSES OF THE WORKFORCE DRUG AND ALCOHOL TESTING ACT; AND AMENDING SECTION 39-2-206, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-2-206, MCA, is amended to read:

"39-2-206. Definitions. As used in 39-2-205 through 39-2-211, the following definitions apply:

(1) "Alcohol" means an intoxicating agent in alcoholic beverages, ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(2) "Alcohol concentration" means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath, as indicated by an evidential breath test.

(3) "Controlled substance" means a dangerous drug, as defined in 49 CFR, part 40, except a drug used pursuant to a valid prescription or as authorized by law.

(4) (a) "Employee" means an individual engaged in the performance, supervision, or management of work in a hazardous work environment, security position, position affecting public safety, position dealing with protected health information as defined by 45 CFR, parts 160 and 164, or fiduciary position for an employer and does not include an independent contractor. The term includes an elected official.

(b) The term does not include an individual who is an independent contractor.

(5) "Employer" means a person or entity that has one or more employees and that is located in or doing business in Montana.

(6) "Hazardous work environment" includes but is not limited to positions:

(a) for which controlled substance and alcohol testing is mandated by federal law, such as aviation, commercial motor carrier, railroad, pipeline, and commercial marine employees;

(b) that involve the operation of or work in proximity to construction equipment, industrial machinery, or mining activities; or

(c) that involve handling or proximity to flammable materials, explosives, toxic chemicals, or similar substances.

1 (7) "Medical review officer" means a licensed physician trained in the field of substance abuse.

2 (8) "Prospective employee" means an individual who has made a written or oral application to an
3 employer to become an employee.

4 (9) "Qualified testing program" means a program to test for the presence of controlled substances and
5 alcohol that meets the criteria set forth in 39-2-207 and 39-2-208.

(10) "Sample" means a urine specimen, a breath test, or oral fluid obtained in a minimally invasive manner and determined to meet the reliability and accuracy criteria accepted by laboratories for the performance of drug testing that is used to determine the presence of a controlled substance or alcohol."

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